IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.01.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

WRIT APPEAL NO.1468 OF 2004

Tamil Nadu Housing Board
rep. by its Chairman and
Managing Director
Nandanam, Chennai 600 035. .. Appellant

vs.

1.G.M. Subbaiyan
2.R. Kamalam
3.Kuppini Ammal (died)
4.A. Sampoornam
5.Minor A. Suresh
6.Minor A. Chitra

7.The State of Tamil Nadu
rep. by Secretary to Government
Housing and Urban Land
Development Department
Fort St. George
Chennai 600 009.

8.The Special Tahsildar
(Land Acquisition)
Housing Unit III
Coimbatore.

(R.1 and R.2 are legal heirs of
deceased R.3. Cause title
amended as per order of Court
dated 14.02.2005 made in WAMP.
No.307 of 2005.) .. Respondents

WEB COPY

Writ appeal filed under Clause 15 of the Letters Patent against the order of the Hon'ble Mr. Justice F.M. Ibrahim Kalifulla made in W.P.No.5475 of 1991 dated 19.03.2001 presented in this Court under Article 226 of the constitution of India, to issue a writ of Certiorari, calling for the records of the 1st respondent made in G.O.Ms.No.222, Housing and Urban Development dated 10.2.86 as

https://hcservices.ecourts.gov.in/hcservices/

published in the Tamil Nadu Govt. Gazette Part II, dated 26.2.86 and quash the same.

For appellant : Mr.S.Kasikumar
Mr. K. Chelladurai

For respondents 1 to 6 : Mr. A.L.Somayaji,Sr.Counsel for Mr. V. Chockalingam

Mr.V.Viswanathan
Addl.Govt. Pleader for R.7 & 8.

....

JUDGMENT

(Judgment of the Court delivered by P.SATHASIVAM,J.)

Aggrieved by the order of the learned Single Judge dated 19.03.2001 made in W.P.No.5475 of 1991, allowing the writ petition filed for quashing the acquisition proceedings, the Tamil Nadu Housing Board through its Chairman and Managing Director, Chennai-35, has filed the above writ appeal.

2. Heard Mr. S.Kasikumar, learned counsel for the appellant, Mr. A.L.Somayaji, learned senior counsel for respondents 1 to 6, and Mr.V.Viswamanthan, learned Additional Government Pleader for respondents 7 and 8.

3. For convenience, we shall refer the parties, as arrayed before the learned single Judge.

4. According to the writ petitioners, the lands bearing Survey Field No.15/2, measuring an extent of 1.44 acres and Survey Field No.18/1 measuring an extent of 2.18 acres in GanapathY Village, Coimbatore Taluk belonged to one Muthusamy Gounder, father of the petitioners 1 to 3 and husband of the 4th petitioner. According to them, as per partition deed dated 23.10.1980, all of them had 1/4th share each in the said lands and they sold a portion of the aforesaid lands in favour of five persons under a registered sale deed dated 27.04.1983 and retained the balance for themselves. The respondents initiated acquisition proceedings in respect of the aforesaid lands for the purpose of neighbourhood scheme in the year 1983. But, the petitioners have not been served with any notice for enquiry under Section 5-A of the Land Acquisition Act, 1894 (in short, 'the Act'). They came to know that without following the procedure, the award was passed on 26.02.1988, which is beyond the prescribed period of two years. The petitioners were also not served with any notice for award enquiry under Sections 9(3) and 10 of the Act.

5. On behalf of respondents 1 and 2, the Deputy Secretary to Government, Housing and Urban Development Department, Chennai-9, has filed a counter affidavit, wherein it is stated that the entire land acquisition proceedings were initiated only after observing all the formalities and notice for 5-A enquiry was served on the registered holders who did not appear in the enquiry. As such, notice for 5-A enquiry was served on the registered land owners, viz.,

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Subbaiyan and Kamalam on 03.06.1983 and 04.06.1983 respectively. The other two petitioners are not registered holders. Likewise, award enquiry notices under Sections 9(3) and 10 of the Act were affixed on the survey stones of the lands of the petitioners 1 and 3 on 01.06.1987 and 24.10.1988, but both of them did not appear for award enquiry and hence, the award was passed on 26.02.1988.

6. Initially, by order dated 27.09.1999, the writ petition was dismissed by a learned Judge (T.Meenakumari,J.) of this Court and thereafter, the petitioners filed Review Application No.17 of 2000, to review the said order dated 27.09.1999. The very same learned Judge, by order dated 31.08.2000, after finding that notices had not been properly served on the petitioners as per Section 45 of the Land Acquisition Act, both for 5-A enquiry and award enquiry, set aside the earlier order dated 27.09.1999, and directed the Registry to post the writ petition before another learned Judge to consider whether there was any delay on the part of the petitioners in approaching this Court. Accordingly, the writ petition was heard by another learned Judge (F.M. Ibrahim Kalifulla,J.), who, by order dated 19.03.2001, after accepting that the petitioners obtained copy of the award only on 10.01.1991, which was not denied by the respondents and inasmuch as the writ petition came to be filed in February, 1991, rejected the contention relating to delay raised by the Department. In view of such conclusion, viz., that there was no delay in filing the writ petition and in view of the categorical findings of the other learned Judge (T.Meenakumari,J.) on merits, which became final, the learned Single Judge allowed the writ petition.

7. Mr. Kasikumar, learned counsel appearing for the appellant pointed out that some of the registered land owners were duly served with notice for 5-A enquiry and award enquiry and inasmuch as the award was passed on 26.02.1988, the writ petition which was filed only in February, 1991, cannot be entertained and the same is liable to be dismissed on the ground of laches. In support of his claim, he relied on various decisions of this Court as well as the Apex Court. At the outset, we make it clear that if there is unreasonable delay and the same has not been properly explained, the writ petition is liable to be dismissed on the ground of delay. In the case on hand, it is the specific claim of the writ petitioners that they were registered holders of the lands on the date of 4(1) notification and no notice was served either for 5-A enquiry or for award enquiry under Sections 9(3) and 10 of the Act.

8. As pointed out by Mr. A.L. Somayaji, learned senior counsel for the writ petitioners, in the counter affidavit filed in the writ petition, it is stated that notices under sections 9(3) and 10 of the Act were served on one Sadasivam, son of 1st petitioner, Subbaiyan on 28.06.1986. According to the Department, after receipt of the said notice, the petitioners did not appear for enquiry. On behalf the petitioners, a reply affidavit was filed by the first petitioner, G.M. Subbaiyan denying those averments. It is specifically stated that apart from Subbaiyan and Kamalam, Arumugam and Kuppini Ammal are also owners of the lands in question and no notice had been issued to the said Arumugam and Kuppini Ammal. It is also stated that no notice for 5-A enquiry was served on Subbaiyan and Kamalam as alleged by the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Department. In fact, it is pointed out that notice under Sections 9 (3) and 10 of the Act could not have been served on the son of Subbaiyan, since the said Subbaiyan had no son by name, Sadasivam. It is also relevant to notice that in the counter affidavit filed in Review Application No.17 of 2000, the Deputy Secretary to Government, Housing and Urban Development Department has stated that,

> "the award enquiry was posted on 30.07.1986. Award enquiry notice under Sections 9(3) and 10 of the Act were affixed on the survey stones of the lands of the petitioners, viz., G.M. Subbaiyan and Kamalam on 01.06.1987 and 24.10.1988. ... "

9. As rightly pointed out by the learned senior counsel, the respondents are not consistent in their stand, and no tangible materials were placed before us to show as to when and how the petitioners were served with notice for 5-A enquiry and for award enquiry under Sections 9(3) and 10 of the Act. In view of different stand taken by the Department and the stout denial by the writ petitioners by filing reply affidavit, in the absence of sufficient proof from the records and in view of the categorical findings of the learned Judge in Review Application No.17 of 2000 dated 01.11.1999, which became final since no appeal was filed by the Department, we are unable to accept the contention of the learned counsel for the appellant. In view of the factual details as mentioned above, while accepting the legal position we are of the view that there is no need to refer all the decisions referred to by the learned counsel for the appellant. In fact, the learned single Judge (F.M.Ibrahim Kalifulla,J.), considered the very same objection in detail in the light of the decision of the Apex Court in Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd. (AIR 1997 SC 482), and in the absence of specific averment and material in the form of record as to when the petitioners were served with notice for 5-A enquiry and award enquiry, accepted the claim of the writ petitioners that they obtained copy of the award only on 10.01.1991 and filed writ petition in the month of February, 1991 and rejected the objection of the Housing Board relating to delay. We are in entire agreement with the said conclusion and we are also satisfied that there is no delay in filing writ petition.

In the light of what is stated above, we do not find any valid ground or infirmity in the order impugned. Consequently, the writ appeal fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

kh

To

1.The Secretary to Government
  State of Tamil Nadu
  Housing and Urban Land
  Development Department
  Fort St. George
  Chennai 600 009.

2.The Special Tahsildar
  (Land Acquisition)
  Housing Unit III, Coimbatore.

+1cc to Mr.K.Chelladurai (TNHB) Sr 1740
+1cc to Mr.V.Chokalingham, Advocate r 1581
+1cc to the Govt. Pleader Sr 1826

GV (CO)
km/12.1.

W.A.No.1468 of 2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/